

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Regulation of Prepaid Calling Card Services)	WC Docket No. 05-68

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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I. INTRODUCTION AND SUMMARY

SBC Communications Inc., and its affiliated companies (collectively, SBC) respectfully submit the following reply comments in response to the Commission's *Prepaid Calling Card NPRM*.¹ As Commissioners Copps and Adelstein predicted, the *Prepaid Calling Card NPRM* has created incentives for prepaid calling card providers to push past the limits of the Commission's rules and self-declare that their cards are "enhanced" so they can avoid making universal service contributions and paying access charges while the *NPRM* is pending.² SBC urges the Commission to restore regulatory certainty and fair competition to the prepaid calling card marketplace by ensuring that *all* prepaid calling card providers comply with the Commission's rules during the pendency of the *NPRM*. To that end, SBC agrees with the goals of the emergency petition for interim relief recently filed by AT&T and we support the end result of AT&T's "alternative" proposal, whereby all prepaid calling card services would be subject to universal service contributions as well as interstate *and* intrastate access charges.³ SBC further urges the Commission to address the root cause of the current prepaid calling card controversy – the Commission's "Byzantine and broken" intercarrier compensation regime – by expeditiously completing comprehensive intercarrier compensation reform.⁴

¹ *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, FCC 05-41 (released Feb. 23, 2005) (*Prepaid Calling Card NPRM*).

² See Statement of Commissioner Michael J. Copps, Concurring, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, FCC 05-41 (released Feb. 23, 2005) (*Commissioner Copps Statement on Prepaid Calling Card NPRM*); Statement of Commissioner Jonathan S. Adelstein, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, FCC 05-41 (released Feb. 23, 2005) (*Commissioner Adelstein Statement on Prepaid Calling Card NPRM*).

³ AT&T Emergency Petition for Immediate Interim Relief, WC Docket No. 05-68 (filed May 3, 2005) (AT&T Emergency Petition).

⁴ Separate Statement of Commissioner Michael J. Copps, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 (released March 3, 2005) ("Our intercarrier compensation system is Byzantine and broken. . . . Intercarrier compensation is a must-do item for this Commission this year.").

II. DISCUSSION

A. The Commission's *Prepaid Calling Card NPRM* Is Encouraging Unfair Competition in the Prepaid Calling Card Marketplace.

In the order portion of the *Prepaid Calling Card NPRM*, the Commission concluded that AT&T's existing prepaid calling card service is a telecommunications service subject to universal service contributions as well as interstate and intrastate access charges.⁵ The Commission went on to suggest, however, that there may be other so-called "enhanced" prepaid calling cards that might qualify as information services and therefore might not be subject to universal service contributions or access charges.⁶ Rather than definitively answering the question of whether such "enhanced" cards exist and addressing the regulatory obligations that may apply, the Commission instead sought further comment on the matter in the *Prepaid Calling Card NPRM*.⁷

In separate statements on the *NPRM*, Commissioners Copps and Adelstein both raised serious concerns that the Commission's halting approach to resolving this issue would encourage regulatory gamesmanship rather than legitimate head-to-head competition based on the quality and value of a prepaid calling card provider's services. As Commissioner Adelstein observed, "we leave for another day questions about whether these [enhanced] calling card services must also contribute to the universal service fund and how these services are classified for purposes of our intercarrier compensation rules. This ambiguity may be read by providers to signal a regulatory edge for one form of technology over another, despite the fact that the services appear

⁵ *Prepaid Calling Card NPRM* ¶¶ 14-33, 39.

⁶ *Prepaid Calling Card NPRM* ¶¶ 39-42.

⁷ *Prepaid Calling Card NPRM* ¶¶ 38, 41.

functionally the same from the perspective of the consumer.”⁸ Commissioner Copps was even more blunt: “the Commission all but ensures that calling card confusion from the past is perpetuated in the future.”⁹ Verizon further echoed these same concerns in its comments: “The mere pendency of this further proceeding aggravates the risk that some carriers may look for creative ways of tweaking their pre-paid calling card offerings to evade universal service and access charge obligations, with potentially disastrous consequences for consumers and the industry as a whole.”¹⁰

In a highly competitive, low margin business like prepaid calling card services, these concerns are well founded. Indeed, some prepaid calling card providers will undoubtedly seek a cost advantage by claiming that their services are not subject to universal service contributions or access charges.¹¹ Thus, rather than faithfully establishing the “pro-competitive, de-regulatory national policy framework” that Congress envisioned when it wrote the 1996 Act,¹² the Commission has unwittingly created a climate of regulatory uncertainty that rewards prepaid calling card providers who push past the limits of the Commission’s existing rules at the expense of providers that scrupulously comply with those rules.¹³ As discussed below, the Commission

⁸ *Commissioner Adelstein Statement on Prepaid Calling Card NPRM.*

⁹ *Commissioner Copps Statement on Prepaid Calling Card NPRM.*

¹⁰ Verizon Comments at 7.

¹¹ See *Commissioner Adelstein Statement on Prepaid Calling Card NPRM* (“I am concerned that we perpetuate a marketplace dynamic where success is significantly affected by tolerance for regulatory risk.”); Sprint Comments at 16-17 (“[S]ome prepaid card providers may be relying on the Commission’s rulemaking to avoid paying access charges . . . as well as excluding the revenues generated from the interstate calls paid for by the card from their USF reports. Such avoidance and exclusion clearly distort the competitive marketplace and, therefore, any lack of Commission urgency in deciding this matter sends a signal, even if unintended, that the Commission is unconcerned that certain carriers may not be playing by the rules.”).

¹² See Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104th Congress, 2d Sess. 1, 113 (1996).

¹³ See AT&T Comments at 1 (“The current prepaid card marketplace, however, is anything but competitively neutral: some providers make universal service contributions, while other do not; some pay intrastate access while

has an obligation to the communications industry and this nation's communications consumers to eliminate incentives for regulatory gamesmanship and to restore fair competition to the prepaid calling card marketplace.

B. The Commission Should Restore Fair Competition to the Prepaid Calling Card Marketplace by Ensuring that All Prepaid Calling Card Providers Play by the Commission's Rules While the *Prepaid Calling Card NPRM* Is Pending.

The surest way for the Commission to restore fair competition in the prepaid calling card marketplace is to require that *all* prepaid calling card providers follow the Commission's rules while the *Prepaid Calling Card NPRM* is pending. Indeed, several commenters have observed that substantial harms to "consumers, honest competition, and the universal service fund" will occur if the Commission does not ensure that prepaid calling card providers comply with its existing rules in a timely manner.¹⁴ Even AT&T, the proponent of the controversial petition that precipitated the *Prepaid Calling Card NPRM*, recognizes the importance of competitively-neutral, uniform adherence to the Commission's rules: "competitive neutrality in the prepaid card industry is critically important to ensure the continued competitive availability of the prepaid card services upon which low-income consumers, seniors, recent immigrants, and others rely."¹⁵

To that end, AT&T has recently filed an emergency petition asking the Commission for interim relief to ensure that all prepaid calling card services are uniformly subject to the

others pay interstate access for the very same calls."); AT&T Emergency Petition at 5 (AT&T "may not be able to remain in the market if the rules that determine critical costs of service remain unclear and if AT&T continues to be threatened with liabilities that may not be imposed – as a practical matter – on providers of indistinguishable services.").

¹⁴ WilTel Comments at 2. *See also* GCI Comments at 19; Sprint Comments at 16-17; Verizon Comments at 7.

¹⁵ AT&T Comments at 1.

Commission's rules during the pendency of the *Prepaid Calling Card NPRM*.¹⁶ AT&T cites alarming evidence that regulatory uncertainty is encouraging major prepaid calling card providers to take the law into their own hands to evade their access charge and universal service obligations.¹⁷ According to AT&T, providers such as IDT, MCI, Sprint, Verizon and others are stripping or modifying calling party number (CPN) information and/or using a variety of convoluted routing schemes to avoid detection of their inappropriate behavior.¹⁸

To restore fair competition in the marketplace, AT&T urges the Commission to require on an interim basis that all prepaid calling card providers make universal service contributions and pay interstate access charges, until the Commission adopts final rules emanating from the *Prepaid Calling Card NPRM*.¹⁹ Apparently recognizing that not all parties would be willing to support the application of solely *interstate* access charges to prepaid calling cards, AT&T also suggests that prepaid calling card services could, in the alternative, be subject to "intrastate access charges where services provide calling between persons located in the same state, and federal USF and interstate access charges on other calls."²⁰

SBC strongly supports the overarching goal of AT&T's petition: ensuring regulatory certainty and competitive neutrality by requiring *all* prepaid calling card providers to adhere

¹⁶ AT&T Emergency Petition at 1-4.

¹⁷ AT&T Emergency Petition at 4-5.

¹⁸ AT&T Emergency Petition at 5 ("IDT has publicly acknowledged that it has not been contributing to USF on all its prepaid card traffic. It also is routing ordinary intrastate calls through foreign countries such as Japan and Chile and delivering the traffic for termination as if it were international traffic, without originating CPN that would allow the calls to be identified as intrastate by the terminating carriers. . . . MCI, Sprint, Verizon, and other prepaid card providers also appear to be engaging in these same foreign routing practices on intrastate and interstate calls or otherwise are delivering basic service calls without some or all of the originating CPN used to identify the jurisdiction of the call. MCI has also publicly stated that it is not paying USF support on prepaid card services offered through its "Golden Retriever" platform.") (citations omitted).

¹⁹ AT&T Emergency Petition at 2.

²⁰ AT&T Emergency Petition at 2. *See also* AT&T Emergency Petition at 8, 15-18.

uniformly to the Commission's rules while the *Prepaid Calling Card NPRM* is pending. Specifically, SBC supports the end result of AT&T's alternative proposal whereby: (a) all prepaid calling card services would be subject to universal service contributions, and (b) all prepaid calling card services would be subject to interstate *and* intrastate access charges based on the location of the calling and called parties -- which is already the case under existing Commission access charge rules and SBC's existing access charge tariffs.²¹

SBC further agrees with AT&T and other commenters that *immediate* action is required.²² Absent a swift and definitive ruling from the Commission, prepaid calling card providers will continue with efforts to evade their universal service and access charge obligations. The Commission should act now to restore fair competition in the prepaid calling card marketplace.

C. The Controversy Over Prepaid Calling Cards Demonstrates the Urgent Need for the Commission to Complete Comprehensive Intercarrier Compensation Reform.

While SBC supports *interim* Commission guidance to restore fair competition in the prepaid calling card marketplace, SBC reiterates its position that a brand new set of permanent rules to govern prepaid calling card services should not be the Commission's ultimate goal. As SBC previously explained, the current controversy surrounding prepaid calling cards is merely a

²¹ Although SBC supports the end result of AT&T's alternative proposal, we do not necessarily endorse the rationale underlying all of AT&T's arguments supporting that proposal. For example, SBC does not believe that new interim rules are necessary, or that the ESP exemption must be "suspended," in order for prepaid calling card services to be subject to interstate and/or intrastate access charges. AT&T Emergency Petition at 16-17. *See* Opposition of SBC Communications, Inc., *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (March 1, 2004) (explaining applicability and limits of the ESP exemption); Reply Comments of SBC Communications, Inc., *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (March 31, 2004) (same). SBC takes no position at this time on AT&T's proposal to require prepaid calling card providers to report monthly on the number of long distance minutes provided and to certify their compliance with Commission rules. *See* AT&T Emergency Petition at 18-19.

²² *See* AT&T Emergency Petition at 1-2; Sprint Comments at 17.

symptom of much larger problems with the Commission's current intercarrier compensation regime and universal service contribution methodology.²³ In its comments, Sprint likewise observes that "the issues in this proceeding would be moot if the intercarrier compensation scheme and the universal service funding mechanism were rational."²⁴ Indeed, if the Commission replaced the existing hodgepodge of intercarrier compensation rates with a unified regime, providers would have no incentive to misclassify their services to obtain a lower termination rate because there would only be a single, unified rate. Similarly, if the Commission replaced the current revenue-based universal service contribution methodology with a numbers/connections-based methodology, providers would not be able to avoid their contribution obligations by misclassifying telecommunications service revenues as information service revenues.²⁵

Thus, rather than devoting scarce Commission resources to establishing permanent new rules for prepaid calling card services, the Commission should focus its attention on expeditiously completing comprehensive intercarrier compensation reform. In this regard, SBC again urges the Commission to adopt the comprehensive reform proposal submitted by the Intercarrier Compensation Forum (ICF), which will provide the long-term stability necessary to fulfill Congress's vision for a competitive, deregulatory telecommunications marketplace in the U.S.²⁶

²³ SBC Comments at 1-5.

²⁴ Sprint Comments at 4.

²⁵ See Sprint Comments at 4-5.

²⁶ See Letter from Richard Cameron, counsel for ICF, to Marlene Dortch, FCC, CC Docket No. 01-92 (Oct. 5, 2004) (transmitting ICF proposal).

III. CONCLUSION

For all of the preceding reasons, SBC urges the Commission to restore certainty to the prepaid calling card marketplace and proceed expeditiously with comprehensive intercarrier compensation reform.

Respectfully Submitted,

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